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Remarks

The present response is to the Office Action mailed in the above-referenced case on April 02, 2007. Claims 1-13 are standing for examination. The Examiner points out in the Action that no IDS was received when the present application was filed. Claims 1-13 are rejected under 35 U.S.C. 101. Claims 1-13 are rejected by the Examiner under 35 U.S.C. 112, first paragraph. Claims 1-13 are also rejected by the Examiner under 35 U.S.C. 112, second paragraph. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landry et al. (US 6,687,350) hereinafter Landry in view of Brown et al. (US App. No. 2001/0013001) hereinafter Brown.

Applicant herein amends claims 1-7, cancels claims 8-13 and presents new claims 14-23 in order to overcome the 101 and 112 rejections. Applicant does not amend the claims in order to overcome the art. Applicant presents arguments below which show that applicant's claims are patentable over the art when clarified and formatted correctly.

Regarding the 101 rejection, the Examiner states that; "As per claims 1-13, the applicants claim both a method and an apparatus. Claiming both a method and an apparatus is directed to neither a "process" nor a machine" (sic), but rather embraces or overlaps two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only.

Also, as per claims 1-13, the applicants recite the absence of processing means within the card reader. Without any processing means, a card reader would be rendered useless, as it cannot read a smart card. This invention would then have no useful result.

Further, as per claims 1-13, the claims do not yield a tangible result. The claim consists of only hardware, and an action of demodulating a signal, which does not yield a tangible result."

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Applicant herein amends the claims to provide a separate method and system claim. Also, applicant's base claims now recite; "authenticating the user and the transaction at an application server receiving the demodulated identification sequence from the IVR server over a communication network, wherein data processing required for generating, transmitting and authenticating the user occur without data processing assistance from the card reader". Applicant points out that the claims now recite a tangible result of authenticating a user.

Applicant argues the card reader merely couples the smart card to the telephone enabling the smart card to directly transmit modulated signals over the telephone line to the IVR. Applicant's specification recites; "When activated in the card reader, the smart card transmits an identification sequence to the IVR in the form of a modulated signal, which is demodulated by the IVR applet. The identification sequence comprises an 8-byte card number and an 8-byte random number valid only once. The card number is unique and identifies the card issuer, application version and user account (pg. 2, lines 11-17)." Applicant believes the claims, as amended, overcome the 101 rejection and applicant's specification clearly supports the claimed subject matter.

Regarding the 112 rejection, first paragraph, applicant herein amends the claims to remove language pertaining to "processing means being absent from the card". Further, the Examiner states; "As per claims 4-13, the method claims wherein the session key is a function of the 'previous one'. If this 'one' was directed toward a key, it is not enabled how the system would work for the first time. For the first time use, there would be no previous key, and the system would not be able to operate. Also, as per claims 2-13, the claims recite a random number valid only once. As seen in the specification, it would seem that each time a card is used a random number must be emitted by a card. It is not enabled by the specification how the smart card itself may generate a random number each time it is used, as there are no details describing the generation of a different random number each time.

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Applicant herein amends the claim to recite a second operation of the method as inherently reasoned from applicant's specification wherein the method relies upon a key generated from 'the previous one'. Additionally, applicant argues that applicant does not claim that; "the smart card itself may generate a random number each time it is used" as espoused by the Examiner. Therefore, applicant sees no need to enable the Examiner's statement. Applicant believes the balance of the 112 rejections are moot in view of applicant's claims, as amended.

Regarding the 103 rejection, applicant believes the claims, as amended, now must be examined with full consideration of all of the limitation held therein as the numerous 112 rejections and 101 rejections have been overcome by amendment.

Further applicant points out that Landry teaches; "As illustrated in FIG. 2, the smart card reader 10 includes a smart card reader writer unit 22, micro-controller 24, modem circuit 26, a mode selection circuit 28 and an analogue front-end 30 that respectively support the required functionality of the smart card reader 10. An LCD display 32 provides a display surface for displaying status messages. Function keys 34 permit users to select pre-programmed functions. A power supply unit 36 connect to a power pack 38 provides operating current to the smart card reader 10. The connection of the smart card reader 10 with the handset 18 and base set 20 is through the analogue front-end 30. The functions of those components are described in more detail below." (col. 5, lines 23-35) Applicant points out that Landry's card reader/writer performs many of the functions of the transaction and therefore cannot read on applicant's claims.

Therefore, Applicant believes method claim 1 and new method claim 14 are patentable over the art of Landry. Dependent claims 2-7 and 14-23 are patentable on their own merits, or at least as depended from a patentable claim.

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As all of the claims are clearly patentable over the art applicant respectfully requests re-consideration, and that the case be passed quickly to issue. If there are any extensions of time required, such extensions are hereby requested. If there are any fees due, authorization is given to deduct the fees from deposit account 50-0534.

Respectfully Submitted,
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